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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 ROMERO HEAD, as the court-appointed  
9 Personal Representative of the Estate of  
10 ROMEO A. HEAD,

11 Plaintiff,

12 v.

13 DISTTECH, LLC, *et al.*,

14 Defendants.

CASE NO. C16-1727 RSM

ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS PARAGRAPHS

15 **I. INTRODUCTION**

16 This matter comes before the Court upon Defendants DistTech LLC ("DistTech") and  
17 Jacques Wright's ("Defendants") Motion to Dismiss. Dkt. #34. Defendants move under Rule  
18 12(b)(6) to dismiss paragraphs 4.8, 4.9, 4.10, 4.11, 4.12, 4.15, and 4.16 of Plaintiff's recently  
19 filed Amended Complaint. *Id.* Plaintiff Romero Head opposes this Motion. Dkt. #37. For the  
20 reasons stated herein, the Court agrees with Defendants and GRANTS their Motion.

21 **II. BACKGROUND**

22 The background facts in this matter have been summarized by the Court's Order  
23 Granting Defendants' Motion for Judgment on the Pleadings, Dkt. #29, and are incorporated by  
24 reference. In that Order, the Court dismissed Plaintiff's claims against Defendant DistTech for  
negligent hiring, retention, entrustment, supervision, and training, and granted leave for

1 Plaintiff to amend his Complaint “to include paragraphs that ‘merely set forth facts and  
2 assertions which do not include causes of action or claims of negligence.’” Dkt. #29. Plaintiff  
3 filed his Amended Complaint on March 15, 2017. Dkt. #33. This Amended Complaint has  
4 sections titled “The Parties,” “Jurisdiction and Venue,” “Facts,” “Negligence and Reckless  
5 Disregard,” “Damages,” and “Prayer for Relief.” *Id.* In the “Negligence and Reckless  
6 Disregard” section, Plaintiff has amended to include the following paragraphs at issue:

7 4.8 At all relevant times, Defendant DISTTECH and Defendant  
8 JACQUES A. WRIGHT were subject to and required to obey the  
9 minimum regulations and standards established by the Federal  
Motor Carrier Safety Regulations (FMCSR) and trucking industry  
standards.

10 4.9 Defendant DISTTECH was required to confirm and certify  
11 Defendant JACQUES A. WRIGHT’s physical and mental fitness  
for and proper qualifications as a commercial driver.

12 4.10 Defendant DISTTECH in their capacity as an interstate  
13 motor carrier was also required to teach and to train Defendant  
14 JACQUES A. WRIGHT, or confirm that Defendant JACQUES A.  
WRIGHT was properly trained so that he could obey the rules and  
regulations contained in the FMCSR.

15 4.11 Defendant DISTTECH was also required to teach and to  
16 train Defendant JACQUES A. WRIGHT or confirm that  
17 Defendant JACQUES A. WRIGHT was properly trained so that he  
could obey the industry standards of practice for a commercial  
truck driver.

18 4.12 Defendant DISTTECH was required to promulgate and  
19 enforce rules, guidelines, regulations and standards to ensure that  
its drivers, including Defendant JACQUES A. WRIGHT, were  
reasonable and safe in their operation of Company semi-trucks.

20 4.15 Defendant JACQUES A. WRIGHT's employer applies the  
21 principle of safe working and defensive driving to all motor  
vehicle accidents and personal injuries.

22 4.16 Defendant JACQUES A. WRIGHT's employer, when  
23 reviewing an accident or injury must consider company policies,  
24 safety standards, state law, federal regulations and other pertinent  
information in making the determination of preventability.

1 Dkt. #33 at 7-8.

### 2 **III. LEGAL STANDARD**

3 In making a 12(b)(6) assessment, the court accepts all facts alleged in the complaint as  
4 true, and makes all inferences in the light most favorable to the non-moving party. *Baker v.*  
5 *Riverside County Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009) (internal citations omitted).  
6 However, the court is not required to accept as true a “legal conclusion couched as a factual  
7 allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,  
8 550 U.S. 544, 555 (2007)).

9 Where a complaint is dismissed for failure to state a claim, “leave to amend should be  
10 granted unless the court determines that the allegation of other facts consistent with the  
11 challenged pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-*  
12 *Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

### 13 **IV. DISCUSSION**

14 Defendants move to dismiss the above paragraphs from Plaintiff’s Amended Complaint,  
15 citing the Court’s prior Order granting Defendants’ Motion for Judgment on the Pleadings, Dkt.  
16 #29, described above. Defendants argue that the paragraphs above do more than “merely set  
17 forth facts and assertions which do not include causes of actions or claims of negligence.” Dkt.  
18 #34 at 2-3. Defendants argue that these paragraphs are futile and should be dismissed.

19 In Response, Plaintiff argues that he “appropriately amended his complaint to only  
20 include paragraphs setting forth facts and assertions, all of which are relevant to the remaining  
21 issues and claims in the case.” Dkt. #37 at 2. Plaintiff argues that “[e]ach of the paragraphs  
22 attacked by the Defendants only make statements of fact or assertions that will be or should be  
23 admitted by the Defendants, and relate to the very issues with must be considered in determining  
24

1 the negligence of Defendant Wright.” *Id.* at 4. Plaintiff argues in the alternative that the Court  
2 should grant leave for Plaintiff to file a Second Amended Complaint. *Id.* at 12.

3 The Court finds that the paragraphs at issue are not merely facts, otherwise they would  
4 be in the section titled “Facts.” Instead, these paragraphs assert claims against Defendant  
5 DistTech contrary to the Court’s previous Order. The Court will allow Plaintiff to amend to fix  
6 this problem. *See Schreiber, supra.* Plaintiff may add facts or assertions as to regulations and  
7 standards that applied to Defendant Wright, company rules that applied to Defendant Wright,  
8 Defendant Wright’s physical and mental fitness, Defendant Wright’s training, and other  
9 circumstances surrounding Defendant Wright’s actions at issue in the negligence claim against  
10 him. Plaintiff may not include claims against Defendant DistTech or assertions of duties owed  
11 by DistTech to Plaintiff. The Court warns Plaintiff that it may not allow further amendment if  
12 Defendants are forced to move for similar relief in the future.

### 13 V. CONCLUSION

14 For the reasons stated above, the Court GRANTS Defendants’ Motion to Dismiss, Dkt.  
15 #34, and hereby orders that paragraphs 4.8, 4.9, 4.10, 4.11, 4.12, 4.15, and 4.16 of Plaintiff’s  
16 Amended Complaint are DISMISSED. If he so chooses, Plaintiff may file a second amended  
17 complaint as set forth above **within seven (7) days from the date of this Order.**

18 DATED this 4th day of May 2017.

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22 RICARDO S. MARTINEZ  
23 UNITED STATES DISTRICT JUDGE  
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